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09/886,959

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Algirdas Avizienis

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EXAMINER

BONZO, BRYCE P

ART UNIT

PAPER NUMBER

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MAIL DATE

DELIVERY MODE

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:* ALGIRDAS AVIZIENIS

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Application No. 09/886,959  
Technology Center 2100

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Mailed: September 25, 2008

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Before DALE M. SHAW *Chief Appeals Administrator*  
SHAW, *Chief Appeals Administrator*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on May 14, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

APPEAL BRIEF  
Claims Appendix

A review of the file reveals that claims 37 and 43 in the appendix of the Appeal Brief is not consistent as amended in the Amendment filed on May 19, 2006. Appropriate correction is required.

MPEP § 1205.03 states in part:

(B) When the Office holds the brief to be defective solely due to appellant's failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and § 711.02(b).

EXAMINER'S CONSIDERATION OF REPLY BRIEF

A Reply Brief was filed in this application on August 23, 2007. There is no evidence on the record indicating that the Examiner has considered the Reply Brief in accordance with MPEP § 1208.01 and MPEP § 1208.02.

MPEP § 1208.01 states:

Under 37 CFR 41.41(a)(1) and 41.43(b), appellant may file a reply brief as a matter of right within 2 months from the mailing date of the examiner's answer or supplemental examiner's answer.

MPEP § 1208.02 states:

If a reply brief is filed in compliance with 37 CFR 41.41, the primary examiner must either (A) acknowledge receipt and entry of the reply brief or (B) under 37 C.F.R. §41.43(a)(1) the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner's answer responding to any new issue raised in the reply brief.

The Examiner must consider and acknowledge receipt of all Reply Briefs filed via written communication.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) hold the Appeal Brief filed January 24, 2007 defective, as required by 37 CFR § 41.37(d);
- 2) notify the Appellant to submit a "paper" which corrects the Appeal Brief's Claims Appendix under 37 CFR § 41.37(c)(1)(viii);
- 3) acknowledge and consider any "paper" submitted by Appellant to correct the Appeal Brief;
- 4) consider the Reply Brief filed August 23, 2007 as indicated above; and
- 5) for such further action as may be appropriate.

Application No. 09/886,959

If there are any questions pertaining to this Order, please contact the  
Board of Patent Appeals and Interferences at 571-272-9797.

DMS/tsj

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